THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

Company Application No.314 of 2005

29th August, 2011

Between :-

M/s.Mamatha Chit Fund (P) Ltd., (In Prov.Liqn)
Rep. By the Official Liquidator,
High Court of Andhra Pradesh,
Hyderabad .. Applicant

And

G.Shashikanth and others .. Respondents

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

Company Application No.314 of 2005

ORDER:-

This is an application filed under Section 446 (2)(b) of the Companies Act, 1956 read with Rules 9 and 11 (b) of the Companies (Court) Rules, 1959 by the Official Liquidator representing the Company (in Liqn) viz., M/s.MamathaChit Fund (Pvt) Ltd., seeking a Decree against the respondents, jointly and severally, for a sum of Rs.26,000/- along with interest at 12% per annum from 10-5-2000 till the date of realization.

The application filed by the applicant came to be allowedon 5-8-2005 granting a Decree for Rs.26,000/- with interest at 12% per annum from 10-5-2000 till the date of realization. Subsequently, the 1st respondent herein filed C.A.No.945 of 2011 to set aside the *ex parte* Decree dated 5-8-2005. The said application is being allowed on this

day by separate order.

Heard learned Counsel appearing for the applicant and the learned Counsel appearing for the 1st respondent.

Learned Counsel appearing for the 1st respondent submits that the 1st respondent could not pay the subsequent instalments consequent on the Company being closed and therefore there was no default on the part of the 1st respondent in paying the 13 months balance instalments out of 50 months. He would further submit that on coming to know of the initiation of proceedings by the Official Liquidator on behalf of the Company in liquidation, the 1st respondent paid Rs.26,000/- on 30-6-2011 and therefore the 1st respondent deserves for waiver of interest.

The factual aspect of the Company being closed before the expiry of the chit period is not contradicted by the learned Counsel appearing for the applicant.

The 1st respondent became a prized subscriber in T.No.42 of Chit Group No.LP12F and the value of the said chit is Rs.1,00,000/- with a duration of 50 months with monthly subscription of Rs.2,000/-. Respondents No.2 to 4 stood as sureties to the 1st respondent.

By an order dated 20-3-2002 made in C.P.No.13 of 2002, this Court appointed the Official Liquidator as Provisional Liquidator of the Company (in Liqn) and further directed to recover the amounts from various parties to whom the Company (in Liqn) had lent the money. As per the chit ledger, the 1st respondent paid chit subscription amount of Rs.74,000/- including dividend credited for 37 months and thereafter no payments were made to the chit ledger.

It is the contention of the 1st respondent that the Company came to be closed and therefore there was none to receive the balance

instalments. In a way it is the contention of the 1st respondent that there is no default on his part in making the balance instalments.

It is brought to my notice that the 1st respondent paid Rs.26,000/- on 30-6-2011. The factual aspect of the Company being closed before the expiry of the chit period is not contradicted by the learned Counsel appearing for the applicant.

In that view of the matter, the 1st respondent is directed to pay another sum of Rs.4,000/- (Rs.Four thousand only) apart from Rs.26,000/- already paid waiving the balance portion of interest amount. Time allowed to the 1st respondent for payment of Rs.4,000/- (Rs.Four thousand only) is two weeks from today. Failing which, the principal amount of Rs.26,000/- shall carry interest at 12% per annum from 10-5-2000 to 30-6-2011.

Accordingly, the Company application is partly allowed.

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B.Seshasayana Reddy, J

29th August, 2011

smr